

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID DIAZ, ¹	§
	§ No. 729, 2009
Petitioner Below-	§
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ File No. 0206019279
Respondent Below-	§ Petition No. 09-33988
Appellee.	§

Submitted: February 4, 2010

Decided: March 22, 2010

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 22nd day of March 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, David Diaz, filed this appeal from the Family Court's order denying his petition for expungement of his 2004 delinquency adjudication on a charge of second degree unlawful sexual contact. The State has filed a motion to affirm the judgment below on the ground that it is

¹ The Court assigned a pseudonym to the appellant pursuant to Supreme Court Rule 7(d).

manifest on the face of Diaz's opening brief that his appeal is without merit.

We agree and affirm.

(2) The record reflects that Diaz was born on June 13, 1989. He was fourteen when the Family Court adjudicated him delinquent in 2004 on the charge of second degree unlawful sexual contact. He was sentenced to an indefinite commitment, which was suspended for the Level IV Pines Program. In November 2009, at the age of 20, Diaz filed a petition to expunge his 2004 Family Court adjudication. The Family Court denied Diaz's petition on the ground that he had "a subsequent adjudication/conviction" under 10 Del. C. § 1001(a).² Diaz appealed that ruling.

(3) In his opening brief on appeal, Diaz claims that the Family Court abused its discretion in denying his petition because it failed to specify Diaz's "subsequent adjudication/conviction" and because it failed to hold a hearing on his petition. Furthermore, Diaz claims that, if the Family Court denied his petition because of a subsequent *adult* criminal conviction, that ground is not a disqualifying factor under Section 1001(a). The State has

² 10 Del. C. § 1001(a) (1999) provides in relevant part, "In any case wherein an adjudication has been entered upon the status of a child under 18 years of age and 3 years have elapsed since the date thereof and no subsequent adjudication has been entered against such child, the child or the parent or guardian may present a duly verified petition to the Court setting forth all the facts in the matter and praying for the relief provided for in this section..."

moved to affirm the Family Court's judgment denying the petition for expungement on the grounds that Diaz had both subsequent adjudications of juvenile delinquency and subsequent criminal convictions as an adult and, thus, was not entitled to expungement under Section 1001(a).

(4) We review an appeal from the Family Court's grant or denial of a petition for expungement for abuse of discretion.³ In this case, Diaz does not deny, nor could he, that he has a record of juvenile adjudications and adult criminal convictions subsequent to his 2004 Family Court adjudication. His subsequent juvenile and adult record is fatal to his petition for expungement.⁴ We, therefore, find no abuse of the Family Court's discretion in denying his petition without holding a hearing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ *State v. Fisher*, 2006 WL 1374677 (Del. May 17, 2006).

⁴ *Lee v. State*, 2009 WL 2894315 (Del. Sept. 10, 2009).